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 26452 Brakes After En
 26453 Condition of Brakes
 26454 Control and Stop
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 26502 Adjustment and Devices
 26503 Safety Valve
 26504 Air Governor
 26505 Pressure Gauge
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 26507 Check Valve
 26508 Emergency Stop
 26520 Vacuum Gauge
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 26522 Check Valve
 26700 Windshields
 26701 Safety Glass
 26703 Safety Glass Rep
 26706 Windshield Wipe
 26707 Condition and Us
 26708 Restricted View : or Material
 26709 Mirrors
 26710 Defective Windsh
 26711 Eyeshades on Bu
 26712 Defroster Require
 27000 Horns or Warnin
 27001 Use of Horns
 27002 Sirens
 27150 Mufflers
 27151 Modification of E
 27152 Exhaust Pipes
 27153 Exhaust Products
 27154 Gases and Fumes
 27155 Fuel Tank Caps
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Number of Lamps	25951	Direction of Beam	27309	New Passenger Vehicles
as	25953	Compliance with Mounting	27450	Thickness of Solid Tire
wer Beam		Regulations	27452	Condition of Solid Tire
or	26100	Mandatory Testing and	27453	Dual Solid Tires
le Beams		Approval	27454	Protuberances on Tires
	26101	Approval of Modifying Devices	27459	Snow-tread Tires
	26301	Motor Vehicles Over Seven	27460	Four-wheel Drive Vehicles
		Tons	27600	Fenders and Mudguards
Lamp	26302	Trailers	27601	Radiator Ornaments
Trucks	26303	Trailer Coaches	27602	Television
	26304	Breakway Brakes	27603	Former School Bus Coloring
on Projections	26309	Disapproved Brake on Motor-	27700	Required Equipment
1 Towed Vehicles		driven Cycle	27800	Equipment for Passenger
ps	26311	Service Brakes on All Wheels	27801	Required Position of Equipment
Rear	26450	Required Brake Systems	27900	Identification Required
Front and Sides	26451	Parking Brake System	27901	Name and Trademark
Trucks	26452	Brakes After Engine Failure	27903	Designation of Cargo
ing Lamps	26453	Condition of Brakes	27905	Fire Departments
System Required	26454	Control and Stopping Require-	27906	School Buses
System		ments	27907	Tow Cars
quirements of	26457	Exemptions	28000	Refrigerator Vans
	26458	Power Brake: Single Control	35100	Width
Lamps	26502	Adjustment and Use of Special	35101	Pneumatic Tires
d Side-marker		Devices	35102	Loose Loads
	26503	Safety Valve	35103	Plywood Loads
umps on Trailer	26504	Air Governor	35104	Vehicles Limited to 120-inch
	26505	Pressure Gauge		Width
des of Vehicles	26506	Warning Device	35109	Projecting Lights or Devices
g on Projecting	26507	Check Valve	35110	Projecting Equipment
	26508	Emergency Stopping System	35111	Loads on Passenger Vehicles
Wide Vehicles	26520	Vacuum Gauge	35115	Projecting Devices for Agricul-
mps	26521	Warning Device		tural Products
or Fender Lamps	26522	Check Valve	35250	Height
amps on Fenders	26700	Windshields	35400	General Limitation
tor Lamps	26701	Safety Glass	35401	Combinations of Vehicles
mps	26703	Safety Glass Replacement	35403	Passenger Buses in Urban or
ghts	26706	Windshield Wipers		Suburban Service
umps on Authorized	26707	Condition and Use of Wind-	35404	Passenger Buses Equipped
Vehicles		shield Wipers		With Three or More Axles
umps on Tow Cars	26708	Restricted View: Signs, Stickers	35405	Length of Trolley Coach
Warning Signal		or Material	35406	Loads
	26709	Mirrors	35408	Front Bumper
hing Amber Warn-	26710	Defective Windshields and	35409	Moving Picture Equipment
		Rear Windows	35410	Projections to the Rear
Warning Light	26711	Eyeshades on Bus or Trolley	35411	Combination of Vehicles
evices on Disabled		Coach	35413	Tires on Front of Vehicle
Vehicles	26712	Defroster Required	35417	Logging Dolly Combination
Public Utility	27000	Horns or Warning Devices		Limit
	27001	Use of Horns	35550	Axles
ees	27002	Sirens	35551	Ratio of Weight to Length—
on Lamps and Signs	27150	Mufflers		Collier-Porter Act
on Lamps and Signs	27151	Modification of Exhaust	35600	Solid Tires
quirements		Systems	35601	Metal Tires
ights Resembling	27152	Exhaust Pipes	35655	Violation of Decreased
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ights	27154	Gases and Fumes	35753	Violation of Decreased
s on Reflectorizing	27155	Fuel Tank Caps		Restrictions
	27156	Air Pollution Control Device	35783	Possession of Permit
s on Motorcycles	27300	Safety Belts	35784	Violation of Permit
s on Motor-driven	27302	Use of Approved Belts	35785	Hauling of Saw Logs
	27303	Safety Belt Anchors	35789	Building Mover's Notice to
Other Vehicles	27304	Driver Training Vehicles		Railroad
ights and Reflectors	27305	Firefighting Vehicles	35790	Overwidth Trailer Coaches

35793 Permits for Vehicle Carriers
 36125 Identification Plate Required
 36400 Lift-carrier Limit
 36510 Stopping Distance Requirements

36600 Width Exemptions and Limitations
 36605 Limit of 120 Inches for Certain Vehicles
 36620 Cotton Trailer Combination—70 Feet Length Limit

Introduction

The classification is receiving increased attention but in other jurisdictions the problem in the courts are proposing that the offenses be defined as lesser violations of the creation of a sentence authorized such as the suspension of law on minor cases without trials without all the eliminate inapplicable plea might be required of defense constitutional and adopted in California.

Background on Inf

In New York enacted in 1934 with a misdemeanor minor traffic violations law-abiding and in number, were

"Accordingly in what is now . . . punishment a penal or crim

* This assignment was at the direction of the study.

¹ Wechsler, *The American Legal System* (1956) 42 A.B. 10, 1965, Vol. 10, Penal Code, Part I, *Offenses as Civil Offense* (1952) Colum. L.Rev. Enforcement of Law of New York to a New Penal

² See Assembly Bill Penal Code, Part I, applied on contempt on proof of the latter would appear (Veh. C. Association of

³ Bergan, J. (concurrent and 266 N.Y.S.

B. STUDY *

Introduction

The classification of minor traffic violations as noncriminal infractions is receiving increasing attention in recent years, not only in California but in other jurisdictions, as a basis for more realistic treatment of the problem in the courts. Leading authorities in the field of criminal law are proposing that the historic distinction between petty and serious offenses be defined more systematically to facilitate enforcement of lesser violations of police regulations.¹ The system under study involves the creation of a category of non-criminal offenses for which the sentence authorized upon conviction would be a fine or other civil penalty, such as the suspension of a license or attendance at a school for traffic violators.² Jail would not be authorized as a sanction. Existing provisions of law on arrest, evidence, presumptions and defenses in misdemeanor cases would apply to traffic infractions and judges would conduct trials within the present framework of criminal procedure but without all the paraphernalia of jury trial. Other modifications to eliminate inappropriate criminal procedures on arraignment, bail and plea might be considered in order to reduce the number of appearances required of defendants who wish to appear on their traffic citations. No constitutional amendment would be required and the proposal could be adopted in California by appropriate amendments to the codes.

Background on Infraction System

In New York "[T]he traffic infraction was first created by a law enacted in 1934 (L.1934, Ch. 485) after it had become apparent that, with a misdemeanor criminal status attached to convictions even for minor traffic violations, the automobile drivers of the State, a generally law-abiding and responsible group of citizens then rapidly increasing in number, were incurring misdemeanor convictions in vast number."³

"Accordingly, the Vehicle and Traffic Law was amended to provide in what is now Section 155 '[a] traffic infraction is not a crime and the . . . punishment imposed therefor shall not be deemed for any purpose a penal or criminal . . . punishment, and shall not affect or impair

* This assignment was undertaken by the Administrative Office of the California Courts at the direction of the Judicial Council. Mr. Eugene J. Didak, attorney, prepared the study.

¹ Wechsler, *The American Law Institute: Some Observations On Its Model Penal Code* (1956) 42 A.B.A.J. 321; Justice of the Peace and Local Government Review, July 10, 1965, Vol. 129, pp. 442-443, and September 11, 1965, Vol. 129, p. 594; Model Penal Code, Proposed Official Draft, 1962; Gausewitz, *Reclassification of Certain Offenses as Civil Instead of Criminal* (1937) 12 Wis. L.Rev. 365; Perkins, *The Civil Offense* (1952) 100 U. of Pa. L.Rev. 832; Sayre, *Public Welfare Offenses* (1933) 33 Colum. L.Rev. 55; Perkins on Criminal Law (1957) pp. 692-710; Lord Devlin, *The Enforcement of Morals* (1965) pp. 26-42, Oxford University Press; *Proposed Penal Law of New York* (1964) 64 Colum.L.Rev. 1469; Gausewitz, *Considerations Basic to a New Penal Code* (1936) 11 Wis. L.Rev. 346, 480.

² See Assembly Bill No. 845 of the 1965 session of the California Legislature; Model Penal Code, Proposed Official Draft, 1962. Provision could be made for jail to be applied on contumacious failure to pay a fine, as provided in the Model Penal Code or on proof of the violation of a written promise to pay a fine, or appear in court. The latter would parallel the California procedure upon violating a written promise to appear (Veh. Code § 40508) and has been suggested by a special committee of the Association of Municipal Court Clerks.

³ Bergan, J. (concurring) *People v. Letterio and People v. Kohler* (1965) 16 N.Y.2d 307 and 266 N.Y.S.2d 368.

the credibility as a witness, or otherwise, of any person convicted thereof.' By the same statute of 1934, the definitions of 'crime' in section 2 of the Penal Law were amended to state 'Except that the acts defined as traffic infractions by the vehicle and traffic law . . . heretofore or hereafter committed, are not crimes.'"⁴

The same condition that prevailed in New York in 1934 exists to a heightened degree in California today. Section 15 of our Penal Code defines as a crime or public offense an "act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) Imprisonment; (3) Fine; (4) Removal from office; or, (5) Disqualification to hold and enjoy any office of honor, trust, or profit in this state." During the 1965-66 fiscal year 9,041,374 cases involving traffic violations were filed in the municipal and justice courts of California.⁵ Fines and jail being authorized upon conviction in these cases, the net effect is that practically every person who drives a car in this state either is or can expect to be classified a misdemeanor.⁶ While criminal designation may be appropriate for wilful and serious traffic violations such as reckless or drunken driving, or driving without a license or with a suspended or revoked license, it may be less appropriate for that vast bulk of vehicle law violations such as parking and minor "moving" violations now subject to a maximum penalty of \$50 fine or five days in jail upon a first conviction.⁷

In addition, California, unlike New York, the federal government and many of the states, allows a jury trial, however trivial the offense.⁸ The cost to the state and counties of conducting a jury trial has been estimated at several hundred dollars per day.⁹ In the 1965-66 fiscal year there were almost 7,500 jury trials of traffic violations in California municipal and justice courts.¹⁰ The number of traffic jury trials in the municipal courts increased 288 percent within the past 10 years, as compared to about a 67 percent increase in total traffic filings during the same period.¹¹ Reliable estimates are that about half the traffic jury trials are for minor violations subject to a maximum penalty of \$50 fine or five days in jail. There is further cause for concern in the fact that traffic jury cases take so long to try, from one-half day to one week or longer for each case.¹² Not only are the judge, clerk, bailiff and

⁴ *Ibid.*

⁵ Based on statistical reports filed with the Judicial Council by the municipal and justice courts.

⁶ Pen. Code § 19; Veh. Code § 42001.

⁷ Veh. Code § 42001. Of the more than nine million traffic filings last year, close to 5 million were parking violations and probably well over 95% of the balance were minor moving violations. Note 5, *supra*. Wechsler, *The American Law Institute: Some Observations On Its Model Penal Code* (1956) 42 A.B.A.J. 321, 324; Perkins on Criminal Law (1957) p. 701.

⁸ Pen. Code § 689. The 1964 Annual Traffic Court Inventory by the American Bar Association showed that 265 cities of at least 10,000 population do not provide a jury trial in minor traffic cases. (Traffic Court Justice, Vol. 7, No. 1, January 1966, published by the A.B.A.) The 1963 Inventory showed that courts in 22 states do not afford a jury trial for traffic offenses in their courts.

⁹ A recent five-day jury trial in San Francisco on seven parking tickets was estimated to cost the taxpayers between \$3,000 and \$3,750, or an average of \$600 to \$750 per day. (People v. Muller, reported by the San Francisco press in January, 1966; Letter from Mr. James Cannon, Clerk of the San Francisco Municipal Court to Mr. Ralph N. Kleps, January 19, 1966).

¹⁰ Based on statistical reports filed with the Judicial Council by the municipal and justice courts.

¹¹ *Ibid.*

¹² See *California Traffic Law Administration* (1960) 12 Stan.L.Rev. 388, 413; The recent parking violation cases of People v. Muller, note 9, *supra*, which took five days to try before a jury, is not an isolated example. See Warren, *Traffic Courts* (1942) p. 74.

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¹⁴ The American Bar Association showed that 265 cities of at least 10,000 population do not provide a jury trial in minor traffic cases. (Traffic Court Justice, Vol. 7, No. 1, January 1966, published by the A.B.A.) The 1963 Inventory showed that courts in 22 states do not afford a jury trial for traffic offenses in their courts.

¹⁵ See note 1. "Trial by jury is a right which inheres in the very nature of our government." Justice of the Peace, 442-443.

¹⁶ Newkirk, M.

¹⁷ See note 17.

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courtroom tied up but 12 jurors, at considerable personal loss, must sit and listen as long as a week on the issue, for example, of guilt on a parking ticket, whereas the same issue can be heard much more expeditiously by the court without a jury. It seems unfair to the jurors, other litigants and the public to spend so much time, effort and money on such relatively minor cases, particularly when our courts are jammed with important cases waiting months for trial.¹³ The considerable time and cost of conducting these several thousand traffic jury trials on minor violations may be used to better advantage in giving more court time to the 3,000,000 other citations issued annually for "moving" traffic violations that now can receive but scant attention at a bail window or for a minute or two in congested courts,¹⁴ or in providing more courts and judges for the trial of substantial and serious civil and criminal cases.¹⁵

England

In England the Council of the Law Society last year recommended to the Lord Chancellor, the Home Secretary and the Minister of Transport that noncriminal traffic offenses should be removed from criminal jurisdiction and transferred to traffic courts.¹⁶ The main motivation is to end the "stigmatising as criminals of more than 62 percent of those who . . . come before the courts" which "has the inevitable consequence of diminishing the obloquy which ought properly to attach to those who commit what the public normally regard as truly criminal offences."¹⁷ Magistrates would preside in the proposed English traffic courts, and would not have the power to give jail sentences.¹⁸

United States

In the United States, the drafters of the Model Penal Code have acknowledged the need for a public sanction calculated to secure enforcement in situations where it would be impolitic or unjust to condemn the conduct involved as criminal. In their view, "the proper way to satisfy that need is to use a category of noncriminal offense, for which the sentence authorized upon conviction does not exceed a fine or fine and forfeiture or other civil penalty, such, for example, as the cancellation or suspension of a license. This plan, it is believed, will serve the legitimate needs of enforcement, without diluting the concept of crime or authorizing the abusive use of sanctions of imprison-

¹³ 12 Stan.L.Rev., *supra* note 12 at 413. It was reported that civil cases in the Los Angeles Municipal Court were required to wait 18 months for trial. In the superior courts on June 30, 1965, there was an average delay of from 4 to 13 months for civil jury trials in courts with nine or more judges. It should be noted that there were 7,984 jury trials in all the superior courts of the state during the 1964-65 fiscal year, of which 3,000 were criminal cases, which was less than the number of jury trials on lesser traffic offenses. (See Annual Report of the Administrative Office of the California Courts (1966) 27-32, for figures on superior court backlog, delay and number of jury trials.)

¹⁴ The American Bar Association Traffic Court Program has consistently urged that facilities be provided to bring more violators into courts staffed by judges as a necessary part of an effective program to promote traffic safety. (See Fisher, Vehicle Traffic Law (1961) p. 52.)

¹⁵ See note 13, *supra*. As pointed out by Warren (Traffic Courts (1942) pp. 74-75): "Trial by jury has come to be applied to all types of cases at law as a matter of course, with the result that it is occasionally used under conditions for which it is not well fitted, i.e., under circumstances where the advantages which inhere in the jury system are outweighed by a number of practical disadvantages. Most traffic cases fall into this category."

¹⁶ Justice of the Peace and Local Government Review, July 10, 1965, Vol. 129, pp. 442-443.

¹⁷ Newkirk, *Motoring Offenses*, 115 Law Journal 655, Oct. 1, 1965.

¹⁸ See note 174, *infra*.

ment."¹⁹ Accordingly, the Model Penal Code provides in paragraph (5) of Section 1.04: "(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction or if it is defined by a statute other than this Code which now provides that the offense shall not constitute a crime. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense."²⁰

Upon conviction of a violation the Model Penal Code authorizes the court to suspend imposition of sentence²¹ or impose a fine not exceeding \$500²² and suspend or cancel a license.²³ When a fine is imposed, the court may order jail commitment for contumacious failure to pay the fine at a rate not exceeding one day per each five dollars or a total of thirty days.²⁴

Comparing these provisions with those authorizing jail as an immediate sanction the drafters said: "A petty offense category, less than a misdemeanor, is, of course, widely employed, though generally such offenses are denominated criminal. See, e.g., U.S. Code, Title 18, Sec. 1. Motivated mainly by a wish to facilitate enforcement, there has been some development of a petty offense category, which, though sentence of fine or imprisonment is authorized, is declared not to constitute a 'crime.' See, e.g., N.Y. Vehicle and Traffic Law Sec. 2 (29), Conservation Law Sec. 678 ('traffic infractions'); It is submitted that this plan is undesirable. If a sentence of imprisonment is authorized (as an immediate sanction upon conviction rather than merely to coerce the payment of a penalty) it is an inadmissible semantic manipulation to declare that the offense is not a crime. Imprisonment, it is submitted, ought not be available as a punitive sanction, unless the conduct that gives rise to it warrants the type of social condemnation that is and ought to be implicit in the concept crime."²⁵

New York

The approach taken in the Proposed Penal Law of New York is similar to that of the Model Code in that every offense that is not a crime is a "violation."²⁶ Proposed section 15.15 provides that "An offense is a violation if . . . a person convicted thereof may be sentenced to a term of imprisonment which cannot exceed 15 days. . . ."

¹⁹ Model Penal Code, Tentative Draft No. 2, 1954, Comment, pp. 8-9. For proposals of this kind the comment refers to Gausewitz, *Reclassification of Certain Offenses as Civil Instead of Criminal* (1937) 12 Wis. L.Rev. 365; Perkins, *The Civil Offense* (1952) 100 U. of Pa. L.Rev. 832.

²⁰ Model Penal Code, Proposed Official Draft, 1962. The Model Penal Code is not intended to establish uniformity, but rather to supply an integrated body of material which can be useful in any effort to revise substantive penal laws. It has been in formulation for more than 10 years and has served as a guide for those states which have revised or are revising their criminal laws. Packer, *The Case for Revision of the Penal Code* (1961) 13 Stan.L.Rev. 252; Turner, *Why No Revised Criminal Code?* (1961) 49 Ky.L.J. 477; Remington and Rosenblum, *Current Problems in Criminal Law: The Criminal Law and the Legislative Process* (1960) U. Ill. L.F. 481.

²¹ 6.02(4).

²² 6.03(4).

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²⁵ See note 19, *supra*.

²⁶ *Proposed Penal Law of New York* (1964) 64 Colum. L.Rev. 1469.

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As noted in the comment above, however, the New York practice of providing imprisonment as an immediate sanction has been criticised.²⁷ With respect to traffic infractions it does not appear that New York proposes to change the position it adopted in 1934, for the Proposed Penal Law defines an offense, of which crime is a subcategory, as a breach of any law other than a traffic regulation, for which a sentence to imprisonment or to a fine is authorized upon conviction.²⁸

California

Since 1962 interest has been growing in California in the classification of minor vehicle law offenses as noncriminal "infractions" subject to trial without jury,²⁹ and in 1965 Assembly Bill No. 845 was introduced in the Legislature to create such a classification.³⁰ The Judicial Council, by action taken at its May 1965 meeting, endorsed the concept of a traffic infraction system for California and supported Assembly Bill No. 845, provided certain amendments could be made. After the measure was assigned for interim legislative study, the Council gave the highest priority to this subject and, acting in cooperation with a special committee of the State Bar of California under the chairmanship of Judge Raymond R. Roberts, of the Los Angeles Superior Court, and other interested groups, proposes to submit its recommendations to the 1967 Legislature and to the Governor.³¹

Judge Francis Cochran, Presiding Judge of the Los Angeles Municipal Court in 1965, said both the public and the courts would benefit from the infractions system and estimated that it would eliminate 1,000 jury trials per year in the Los Angeles court, freeing judges for civil cases then waiting nearly 18 months for trial.³² The Los Angeles County Grand Jury report of December 1965 recommended enactment of legislation to provide for nonjury trials of traffic infractions³³ and the Los Angeles County Board of Supervisors favors the adoption of such legislation as a convenience to the citizens with savings to

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ 1962 Study of the New York Law on Infractions and Offenses made at the direction of the Judicial Council by Mr. Eugene Didak, attorney, Administrative Office of the Courts. H.R. 61, 1963 Reg. Sess., requesting the Assembly Interim Committee on Transportation and Commerce to study the subject of revision of the law to the end that many of the motor vehicle offenses now classed as misdemeanors instead be treated as administrative rather than criminal offenses. Speech by Judge Raymond R. Roberts, Los Angeles Superior Court, to the Lawyers Club of Los Angeles, August 14, 1963, reported in the Los Angeles Daily Journal for that date and in the Los Angeles Metropolitan News, August 15, 1963. The judges and prosecutors division of the 1963 Governor's Traffic Safety Conference recommended that study be given to possible reclassification of certain traffic offenses as infractions. An earlier recommendation by the 1958 Governor's Traffic Safety Conference was that certain traffic misdemeanors be classified as "petty offenses," limited in penalty and triable without a jury. (See *Traffic Law Administration*, 12 Stan. L.Rev. 388, fn. 189 at 415.) Resolution of the Municipal Court Judges Workshop, April 18, 1964, in San Francisco, recommending the classification of minor traffic violations as infractions, and reported by the Municipal Courts Section to the Conference of California Judges, September 26, 1964. Assembly Interim Committee on Transportation and Commerce, Final Report (1965) 21. Reports by Judge Claude M. Owens, Anaheim-Fullerton Municipal Court to the Municipal Court Judges Workshops sponsored by the Conference of California Judges at Palm Springs and San Francisco in April, 1965.

³⁰ Introduced by Assemblymen Carrell and Kennick.

³¹ Letter from Mr. Ralph N. Kleps, Director, Administrative Office of the Courts, to Judge Raymond R. Roberts, September 28, 1965. Los Angeles Daily Journal, November 26, 1965.

³² Los Angeles Herald-Examiner, May 17, 1965; Los Angeles Daily Journal, May 18, 1965.

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or petty offenses that may be proceeded against summarily, and without a jury; and, in respect to other offenses, the constitutional requirement is satisfied if the right to a trial by jury in an appellate court is accorded to the accused. *Byers v. Commonwealth*, 42 Pa. 89, 94, affords an illustration of the first of the above classes. It was there held that while the founders of the Commonwealth of Pennsylvania brought with them to their new abode the right of trial by jury, and while that mode of trial was considered the right of every Englishman, too sacred to be surrendered or taken away, 'summary convictions for petty offenses against statutes were always sustained, and they were never supposed to be in conflict with the common-law right to a trial by jury.' So, in *State v. Glenn*, 54 Md. 573, 600, 605, it was said that 'in England, notwithstanding the provision in the Magna Charta of King John, art. 46, and in that of 9 Hen. 3, chap. 29, which declares that no freeman shall be taken, imprisoned, or condemned but by lawful judgment of his peers, or by the law of the land, it has been the constant course of legislation in that kingdom, for centuries past, to confer summary jurisdiction upon justices of the peace for the trial and conviction of parties for minor and statutory police offenses And when it is declared that the party is entitled to a speedy trial by an impartial jury, that must be understood as referring to such crimes and accusations as have, by the regular course of the law and the established modes of procedure, as theretofore practiced, been the subject of jury trial. It could never have been intended to embrace every species of accusation involving either criminal or penal consequences.' So, also, in New Jersey, where the Constitution guaranteed that 'the right of trial by jury shall remain inviolate,' the court said: 'Extensive and summary police powers are constantly exercised in all the States of the Union for the repression of breaches of the peace and petty offenses, and these statutes are not supposed to conflict with the constitutional provisions securing to the citizen a trial by jury.' "

Upon a prosecution for violation of an oleomargarine statute imposing a penalty of \$50, Mr. Justice Brewer, writing the opinion in *Schick v. United States* (1903) 195 U.S. 65, 67 and 70, said: "So small a penalty for violating a revenue statute indicates only a petty offense. It is not one necessarily involving any moral delinquency. The violation may have been the result of ignorance or thoughtlessness . . .," and cited with approval the reference made in the *Callan* case to the "many decisions of state courts, holding that the trial of petty offenses was not within any constitutional provision requiring a jury in the trial of crimes."

In a reckless driving case, the Supreme Court in *District of Columbia v. Colts* (1930) 282 U.S. 63, citing both the *Callan* and *Schick* cases, said that the constitutional guaranty of jury trial of all crimes ". . . is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury That there may be many offenses called 'petty offenses' which do not rise to the degree of crimes within the meaning of Article III, and in respect of which Congress may dispense with a jury trial, is settled."³⁹ Continuing, the court said:

³⁹ At 72-73. See *Anno.*: 75 L.Ed. 177-221.

"Whether a given offense is to be classed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. The offense here charged is not merely *malum prohibitum*, but in its very nature is *malum in se*." ⁴⁰ It cited with approval the distinction made by the New Jersey Court of Errors and Appeals in *State v. Rodgers* (N.J. 1917) 102 Atl. 433, "between traffic offenses of a petty character, subject to summary proceedings without indictment and trial by jury, and those of a serious character, amounting to public nuisances indictable at common law;" ⁴¹ The Supreme Court pointed out that the defendant in the *Colts* case was "not charged merely with the comparatively slight offense of exceeding the 22 mile speed limit, . . ., or merely with driving recklessly, . . .; but with the grave offense of having driven at the forbidden rate of speed and recklessly, 'so as to endanger property and individuals,' " and accordingly held that such an offense is subject to the constitutional guaranty of trial by jury. ⁴²

In *District of Columbia v. Clawans* (1937) 300 U.S. 617, respondent was convicted of the statutory offense of engaging in a second-hand business without a license and sentenced to pay a fine of \$300 and to be confined in jail for 60 days. Under a District of Columbia statute no jury trial was provided for such prosecutions except in cases where the fine could be more than \$300 or the term of imprisonment more than 90 days. The statute under which the respondent was convicted provided for a maximum punishment of \$300 fine and 90 days in jail. The respondent had demanded and was refused a jury trial. Ruling on the issue the court held that the demand for jury trial was rightly denied.

In the opinion for the Court, Mr. Justice Stone cited its prior opinions which had settled that the right of jury trial secured by the United States Constitution does not extend to every criminal proceeding. He called attention to the fact that at the time of the adoption of the Constitution numerous petty offenses were tried summarily without a jury by justices of the peace in England and by police magistrates or corresponding judicial officers in the Colonies and punished by commitment to jail, workhouse, or house of correction, and said that were it not for the severity of the punishment, the offender could not, under the Court's decisions, claim a trial by jury as of right. Turning to the question whether the 90 days jail penalty is sufficient to bring it within the class of major offenses for which a jury trial may be demanded, particularly where the statute allows no appeal as of right, he said: "If we look to the standard which prevailed at the time of the adoption of the Constitution, we find that confinement for a period of ninety days or more was not an unusual punishment for petty offenses, tried without a jury. Laying aside those for which the punishment was of a type no longer commonly employed, such as whipping, confinement in stocks and the like, and others, punished by commitment for an indefinite period, we know that there were petty offenses, triable summarily under English statutes, which carried possible sentences of imprison-

⁴⁰ *Id.* at 73.

⁴¹ *Ibid.* *State v. Rodgers* held that the offense of driving an automobile while under the influence of intoxicating liquor does not require a jury trial under the constitution, and in the later case of *Latimer v. Wilson* (N.J. 1926) 134 Atl. 750, this was held to be so even though the sentence authorized upon summary conviction was not less than 30 days nor more than six months in jail.

⁴² *District of Columbia v. Colts* (1932) 282 U.S. 63, 72.

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"In the face of this history, we find it impossible to say that a ninety day penalty for a petty offense, meted out upon a trial without a jury, does not conform to standards which prevailed when the Constitution was adopted or was not then contemplated as appropriate notwithstanding the constitutional guaranty of a jury trial. This conclusion is unaffected by the fact that respondent is not entitled to an appeal as of right."⁴³

Thus, as stated in these opinions, certain petty offenses not triable by jury at the time of the adoption of the Constitution may be tried in the same way under the authority of Congress and the legislatures, even where three months' or more imprisonment is provided upon summary conviction. Recent federal court opinions have emphasized the importance of the exercise of legislative authority in applying the rule.⁴⁴

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Section 7 of Article 1 of the California Constitution declares that "The right of trial by jury shall be secured to all, and remain inviolate." In addition, the Penal Code provides in Section 689 that "No person can be convicted of a public offense unless by verdict of a jury, . . . by a finding of the court in a case where a jury has been waived, or by a plea of guilty."

Because of Section 689 there are no holdings squarely on the constitutional question in California, but there are dicta by the California Supreme Court recognizing the authority of the legislature to provide for summary proceedings without a jury of petty offenses of the type so triable at common law.⁴⁵ In the case of an ordinance violation declared by statute to be a misdemeanor and found by the court to fall within the common-law notion of crime or misdemeanor and to be embraced in the state criminal code, the court held that the defendant was entitled to a jury trial.⁴⁶ It was noted by the court with reference to municipal ordinance violations that "The legislature may authorize the summary trial without a jury, of the above class of cases spoken of, they not being embraced in the criminal legislation of the state; but the offense charged here is declared by statute to be a misdemeanor, and the legislature of this state has not attempted to authorize the trial of such a case without a jury, unless a jury be expressly waived." Chief Justice Beatty concurred in that opinion, in his words, "... not because I think the constitution secures the right of trial by jury in prosecutions for petty misdemeanors created by statute or municipal ordinance, but solely upon the ground that the right seems to be conferred by provisions of the Penal Code."

In a prosecution for practicing medicine without a certificate from a board of examiners, a statutory offense punishable by a \$500 fine and one

⁴³ At 625-627.

⁴⁴ U.S. v. Martinelli (1965) 240 F. Supp. 365; U.S. v. Great Eastern Lines, Inc. (1950) 89 F. Supp. 839; Smith v. U.S. (5th Cir. 1942) 128 Fed.2d 990.

⁴⁵ See California citations, *supra* note 38.

⁴⁶ Taylor v. Reynolds, *supra* note 38.

year imprisonment, the court held that the defendant was entitled to a jury trial the offense being one so triable at common law, but in its dictum said "the guaranties in the various state constitutions of the right of jury trial do not prohibit the legislature from providing for summary proceedings without a jury, in cases of such petty offenses as are enumerated in said English statutes, or in cases where the offenses so dealt with are intrinsically of the same nature and degree as those mentioned in said statutes."⁴⁷

On a petition for writ of habeas corpus, denied for the reason that the refusal of a jury trial in a case not amounting to a felony was merely error and not jurisdictional, the court speaking on the kinds of offenses the legislature is empowered to except from the right to trial by jury said: "Vagrancy is, we think, one of those offenses, and the legislature might provide by a general law for the summary trial without a jury of persons charged with said offense; but we agree with the superior court of Los Angeles county sitting in bank, whose learned opinion on the subject was presented to us at the argument here, that there is no valid statutory provision for such a trial without a jury."⁴⁸

On the basis of the historical provision for summary trial of petty offenses, the distinction made by the United States Supreme Court between offenses *mala in se* and *mala prohibita*, and the recognition given by the California Supreme Court to the power of the legislature in such cases, it is clear that many "moving" violations of the Vehicle Code could be classified by statute as infractions triable without a jury.⁴⁹

Noncriminal Classification of Minor Offenses

The union of act and wrongful intent "is an invariable element of every crime unless excluded expressly or by necessary implication."⁵⁰ As noted by Chief Justice Traynor in *People v. Vogel*, some offenses are excluded from this rule: "Under many statutes enacted for the protection of the public health and safety, e.g., traffic and food and drug regulations, criminal sanctions are relied upon even if there is no wrongful intent. These offenses usually involve light penalties and no moral obloquy or damage to reputation. Although criminal sanctions are relied upon, the primary purpose of the statutes is regulation rather than punishment or correction. The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement."⁵¹ Professor Wechsler has pointed out that there is neither

⁴⁷ Ex parte Wong You Ting, *supra* note 38 at 300-301; 31 Am. Jur., *Jury*, § 12 at 19-20.

⁴⁸ In re Fife, *supra* note 38 at 9-10.

⁴⁹ See *California Traffic Law Administration* (1960) 12 Stan. L.Rev. 388, 415; Division 11 of the Vehicle Code, Rules of the Road, except Chapter 12, containing serious offenses such as drunk driving, reckless driving, speed contests, throwing substances at vehicles and the prohibited use of a vehicle by persons addicted to or under the influence of drugs.

⁵⁰ Chief Justice Roger J. Traynor, then Associate Justice, in *People v. Vogel* (1956) 46 Cal.2d 798, fn. 2 at 801, citing Pen. Code § 20 and noting the code commissioner's quotation of Bishop (1 Bishop's Crim. Law, § 227) that "It is, therefore, a principle of our legal system, as probably every other, that the essence of the offense is the wrongful intent, without which it cannot exist."

⁵¹ *People v. Vogel*, *supra* note 50 at 801, fn. 2, citing Sayre, *Public Welfare Offenses*, 33 Colum. L.Rev. 55, 72-75; Hall, *Prolegomena to a Science of Criminal Law*, 89 U. Pa. L.Rev. 549, 568-569; Wechsler, *The American Law Institute: Some Observations On Its Model Penal Code*, 42 A.B.A.J. 321, 324. See also, Perkins on Criminal Law, p. 693.

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time nor personnel to litigate the issue of wrongful intent in these minor offenses.⁵²

That these regulatory offenses are not true crimes ⁵³ has long been recognized and is evidenced by the persistent search for an appropriate label for them,⁵⁴ such as petty offenses,⁵⁵ public torts,⁵⁶ public welfare offenses,⁵⁷ prohibitory laws,⁵⁸ prohibited acts,⁵⁹ regulatory offenses,⁶⁰ public regulations,⁶¹ administrative misdemeanors,⁶² quasi-crimes,⁶³ violations,⁶⁴ ordinance violations,⁶⁵ and civil offenses.⁶⁶ With more particular reference to traffic law violations they are called summary offenses,⁶⁷ disorderly offenses ⁶⁸ and traffic infractions.⁶⁹

While no moral obloquy attaches or should attach to such offenses,⁷⁰ and granting the practical need for retaining liability without proof of wrongful intent in cases occurring in such volume,⁷¹ nevertheless, the imposition of criminal classification and sanctions upon conduct not proved to be criminal has been said to be unjust and destructive of respect for the law.⁷²

That the imposition of jail for a first minor traffic offense ordinarily is unjust is evidenced by the fact that judges in California almost never give a jail sentence in such cases. The usual sentence is stated in the alternative, "Ten dollars or two days." As pointed out by Perkins, "Without doubt judges usually have avoided imposing imprisonment without proof of the normal mens rea requirement."⁷³ It is further evidenced by the fact that the Uniform Bail Schedule for California, adopted after a survey of the schedules in each county, provides for the deposit of bail to be ten or fifteen dollars for a first offense on most minor traffic violations,⁷⁴ the practice being that bail in such cases

⁵² Wechsler, *supra* note 51.

⁵³ *Ibid.*; Chief Justice Traynor, *supra* note 50; 1 Witkin, *California Crimes, Offenses Not Requiring Criminal Intent*, § 62-63 at 66-68; Justice of the Peace and Local Government Review, Sept. 11, 1965, Vol. 129, p. 594; Newkirk, *Motoring Offences* (October 1, 1965) 115 *Law Journal* 655; Perkins, *The Civil Offense* (1952) 100 U. Pa. L.Rev. 832; Fisher, *Vehicle Traffic Law*, *supra* note 38 at 100-102; Gausewitz, *Reclassification of Certain Offenses As Civil Instead of Criminal* (1937) 12 *Wis. L.Rev.* 365; Perkins on *Criminal Law*, p. 701, citing the Model Criminal Code, Blackstone, Gausewitz, Pound, and decisions in several states; Associate Justice Whittaker, (ret.) U.S. Supreme Court, *Lawyers, Laymen and Traffic Courts: Concerted Effort Needed for Improvement* (1963) 49 *A.B.A.J.* 333.

⁵⁴ Perkins on *Criminal Law*, *supra* note 53.

⁵⁵ 18 U.S.C.A. § 1; *District of Columbia v. Clawans* (1937) 300 U.S. 617.

⁵⁶ *Public Torts* (1922) 35 *Harv. L.Rev.* 462.

⁵⁷ Sayre, *Public Welfare Offenses* (1933) 33 *Colum. L.Rev.* 55; *California's Public Welfare Offenses* (1962) 35 *So. Cal. L.Rev.* 423; Wechsler, *supra* note 51.

⁵⁸ 1 *Bl. Comm. Sec.* 58.

⁵⁹ *Regina v. Prince* (1875) *L.R.* 2 *Cr. Cas. Res.* 154, 163.

⁶⁰ *Morissette v. U.S.* (1952) 342 U.S. 246.

⁶¹ *Hammond v. King* (Iowa 1908) 114 *N.W.* 1062, 1063.

⁶² Kirchheimer, *Criminal Omissions* (1942) 55 *Harv. L.Rev.* 615, 636.

⁶³ Fitzgerald, *Real Crimes and Quasi Crimes* (1965) 10 *Natural Law Forum* 21; Lord Devlin, *The Enforcement of Morals* (1965) pp. 26-42, Oxford University Press; Stroud, *Mens Rea* 11 (1914); *State v. Laird* (N.J. 1957) 135 *Atl.2d* 859, 862.

⁶⁴ Model Penal Code, § 1.04 (5); Proposed Penal Law of New York, § 15.15.

⁶⁵ Fisher, *Vehicle and Traffic Law*, *supra* note 38 at 452-455; 31 *Am. Jur.*, *supra* note 38 at 42-43; 50 *C.J.S.* *supra* note 38 at 783-784; A.B.A. *Courts Trying Traffic Cases in Illinois* (1958) Report for the Illinois Traffic Study Commission.

⁶⁶ Gausewitz, *supra* note 53; Gausewitz, *Considerations Basic to a New Penal Code* (1936) 11 *Wis. L.Rev.* 346; Perkins, *The Civil Offense*, *supra* note 53; Witkin, *supra* note 53; Perkins on *Criminal Law*, pp. 702-710.

⁶⁷ § 1202, Pa. Veh. Code, 1958.

⁶⁸ *State v. Shoopman* (N.J. 1953) 94 *Atl.2d* 493-494.

⁶⁹ § 155, N.Y. Veh. and Traffic Law.

⁷⁰ Lord Devlin, *The Enforcement of Morals* (1965) pp. 26-42, Oxford University Press.

⁷¹ Sayre, *supra* note 57.

⁷² Wechsler, *supra* note 51; Gausewitz, *supra* note 53; Johnston, *A Plea for the Hearing and Deciding of Traffic Cases*, 33 *North Carolina L.Rev.* 1, 2.

⁷³ Perkins on *Criminal Law*, *supra* note 53 at 708.

⁷⁴ Cal. Rules of Court, Rule 850; see Twentieth Biennial Report (1965) 50.

is forfeited without further proceedings.⁷⁵ Thus, while California law authorizes jail as an immediate sanction for a first offense, the practice is otherwise and the alternative jail sentence is used merely to assure payment of the fine.

In view of the weight of authority that such offenses are not properly classifiable as crimes and of the fact that criminal sanctions are not used, it seems desirable that both the criminal classification and the immediate sanction of jail be eliminated and an appropriate classification and sanctions be provided which conform to the noncriminal nature of minor traffic regulations and to the enforcement needs and practices in such cases.

Classification of Repetitive Offenses

Assembly Bill No. 845, introduced in the 1965 Regular Session to create a system of noncriminal traffic infractions, by an amendment made on May 6, 1965, added the proviso "that exclusive of violations relating to the standing or parking of an unattended vehicle and those enumerated in Section 21962, each traffic infraction or combination thereof in excess of three within the immediately preceding twelve months period shall constitute a misdemeanor to which the provisions of this section shall not apply." The merits of such a provision is questionable, and it was deleted from the bill by a subsequent amendment.⁷⁶

Treating a violation as a more serious offense by reason of prior violations is not unique. For example, petty theft with a prior conviction is treated as a felony instead of a misdemeanor. However, making a criminal offense a more serious one by reason of a prior is different than treating as a crime what would otherwise be a noncriminal matter. The reasons for classifying these kinds of violations as noncriminal regulatory offenses and for removing them from the criminal law still apply.

Another objection that has been raised is that a defendant might prefer to pay the fine rather than contest an infraction charge even though he may be innocent. On a fourth violation such a defendant could be charged with a misdemeanor and subject to imprisonment, with the punishment actually based upon all four violations but without the right to a jury trial on the first three.⁷⁷ This possibility troubles those interested in preserving the jury trial for cases leading to jail as a sanction.

Treating a fourth or subsequent infraction as a misdemeanor can be criticized on other grounds. It appears that the main reason for treating a repetitive violator as a misdemeanant is the belief that the record of priors indicates a wilful or negligent disregard of traffic laws. Frequently, however, a driver cited for a traffic violation may be charged with more than one violation on the same citation, such as failure to make a full stop at a stop sign, failure to display the vehicle registration and failure to have proper lighting equipment. If convicted of all three infractions, the driver on his second citation within 12 months

⁷⁵ Veh. Code § 40512. Forfeiture of bail is equivalent to a conviction (Veh. Code § 1803). Seventy-three percent of the nonparking traffic filings and more than 90% of the parking filings were handled by bail forfeitures in the municipal courts last year. (See Annual Report of the Administrative Office of the California Courts (1966) 50, 106.)

⁷⁶ Amendment of May 28, 1965.

⁷⁷ Letter of October 13, 1966, from Mr. Ernest Besig, Executive Director of the American Civil Liberties Union of Northern California, to Mr. Ralph N. Kleps.

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⁷⁸ Veh. Code §§ 1335

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